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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,431	01/22/2001	William M. Johns	111788.00101	9036

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EXAMINER	
ZHONG, CHAD	
ART UNIT	**PAPER NUMBER**
2152	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/765,431	JOHNS ET AL.	
	Examiner	Art Unit	
	Chad Zhong	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 February 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/17/02*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-14 are presented for examination.

2. It is noted that although the present application does contain line numbers in specification and claims, the line numbers in the claims do not correspond to the preferred format. The preferred format is to number each line of every claim, with each claim beginning with line 1. For ease of reference by both the Examiner and Applicant all future correspondence should include the recommended line numbering.

3. Applicant is required to update the status (pending, allowed, etc.) of all parent priority applications in the first line of the specification. The status of all citations of US filed applications in the specification should also be updated where appropriate.

4. The use of the trademark IBM among others have been noted in this application (pg 4 for example). It should be capitalized wherever it appears and be accompanied by the generic terminology. Appropriate correction is required through out the entire application.

5. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not include the notary's signature, or the notary's signature is in the wrong place.

Claim Rejections - 35 USC § 112, second paragraph

6. Claims 6-11, 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The claim language in the following claims is murky or not clearly understood:

i. As per claim 14, line 3, it is not clearly understood what is meant by SLA, appropriate definition of the abbreviation must be given.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent.

8. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Dattatri, US 2002/0049815.

9. As per claim 1, Dattatri teaches a method for monitoring performance on a network, the method comprising:

(a) running at least one performance monitor process on the network ([0008], [0017], [0038-0039], wherein the process of network elements are monitored individually);

(b) running a network monitor manager process on the network ([0011], wherein the network monitor manager is centralized point of control as described within this section);

(c) establishing a socket connection ([0045]) from the network monitor manager process to said at least one performance monitor process to control said at least one performance monitor to send a pseudo message to an entry server ([0012]; [0017]; wherein the message is sent across network to gather statistics about the network, end results are gathered at the centralized point of control, see fig 1, management network 102); and

(d) receiving the pseudo message from said at least one performance monitor process and determining a response for the pseudo message for each segment of the network traversed by the pseudo message ([0038], wherein the problem is received at the NOC and type of error/problems are embedded within the messages themselves, a response of solving the said problem then set in place in an attempt to fix the particular network segment that has the problem; [0008]; [0012]; [0015]; [0072]; [0075]).

10. As per claim 2, Dattatri teaches the method of claim 1, further comprising:

(e) running at least one availability monitor process on the network ([0038], wherein status includes availability information);

(f) from the response determined in step (d), detecting at least one possibly failed component of the network ([0038], wherein the failure component is identified);

(g) sending a message from the at least one availability monitor process to the at least one possibly failed component ([0056]; [0077]; wherein tracing messages for errors along the path of said message); and

(h) determining, in accordance with a result of the message, whether the at least one possibly failed component has failed ([0077]).

11. As per claim 3, Dattatri teaches the method of claim 1, further comprising:

(i) running a client-server monitoring process on a server dedicated to the client server monitoring process ([0008];[0011]);

(j) receiving, in the client-server monitoring process, information about transactions executed by production applications on the network ([0012], wherein messages caries information and transactions being made); and

(k) determining performance and availability of the production applications in accordance with the

information received in step (j) ([0017]; [0056]; [0077]).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dattatri, US 2002/0049815, in view of Lin et al. (hereinafter Lin), US 6,405,250.

14. As per claim 4, Dattatri does not explicitly teach the method of claim 3, wherein step (j) comprises running a filtering agent on each of the production applications to convert the information into a form usable by the client-server monitoring process.

15. Lin teaches the above section see for example Col. 7, lines 39-45, for the advantages of distributed filtering system on the network wherein the nodes themselves contains filter.

16. It would have been obvious to one of ordinary skill in this art at the time of invention was made to combine the teaching of Dattatri and Lin because they both dealing with remote monitoring of network systems. Furthermore, the teaching of Lin to distribute filtering agents to each of the local production applications for information conversion would improve the resource management costs for Dattatri's system by allowing portions of the processing to be completed on the client side prior to sending to the server.

17. As per claim 5, Dattatri teaches the method of claim 4, wherein:

the network comprises a mainframe having at least one logical partition which generates an application log ([0048]); and

the method further comprises (1) monitoring the application log through a mainframe monitoring process ([0048]; [0051], when failure occurs, automatic information recovery from the log, monitoring through centralized system leading up to this event is inherent).

18. Claims 6-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dattatri, US 2002/0049815, in view of Lin et al. (hereinafter Lin), US 6,405,250, further in view of 'Official Notice'.

20. As per claim 6, Dattatri teaches the method of claim 5, wherein:

the application log comprises transaction entries having end-user addresses ([0041]; [0048], wherein the messages themselves contain IP addresses of end users); and

21. Dattatri and Lin does not explicitly teach:

step (1) comprises categorizing the transaction entries by the end-user addresses.

"Official Notice" is taken that the concept and advantages of providing for categorization within a database is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to include categorization of a database based on a criteria with Dattatri and Lin because it would provide for a form of well known sorting technique used for easy access of said database.

22. As per claim 7, Dattatri teaches the method of claim 6, further comprising (m) generating a performance report for the network through an administrative process and making the report available over a data network ([0115]).

23. As per claim 8, Dattatri teaches the method of claim 7, wherein the data network comprises the

Internet ([0115]).

24. As per claim 9, Dattatri teaches the method of claim 8, further comprising:

(n) receiving, in the client-server monitoring process, information about transactions executed by e-commerce applications on the network ([0111]; [0110]); and

(o) determining performance and availability of the e-commerce applications in accordance with the information received in step (n) through an e-commerce monitoring process ([0110]; [0115]; [0078]).

25. As per claim 10, Dattatri teaches the method of claim 9, wherein at least one of the e-commerce applications makes at least one Web page accessible to customers, and wherein step (n) comprises placing code in the at least one Web page, the code sending time stamps to the client-server monitoring process when the code is accessed ([0069]; [0088]).

26. As per claim 11, Dattatri teaches the method of claim 10, further comprising providing a central data repository, and wherein the network monitor manager process, the client-server monitoring process, the mainframe monitoring process, the administrative process, and the e-commerce monitoring process communicate with one another through the central data repository (Fig 1, 2, wherein system is communicating through the repository for message back ups).

27. As per claim 12, Dattatri does not explicitly teach:

the method of claim 4, wherein each said filtering agent detects processes running on the network and cross-references the detected processes to known processes, and further comprising forming an event correlation engine in accordance with the detected processes.

28. Lin teaches the above section see for example Col. 8, lines 3-22, wherein detected processes are

associated with the existing processes, the two processes are cross-referenced via an update process, furthermore, newly discovered events are placed in the event queue which makes up part of the event correlation engine.

It would have been obvious to one of ordinary skill in this art at the time of invention was made to combine the teaching of Dattatri and Lin because they both dealing with remote monitoring of network systems. Furthermore, the teaching of Lin

wherein each said filtering agent detects processes running on the network and

cross-references the detected processes to known processes, and further comprising forming an event correlation engine in accordance with the detected processes

would improve the resource management costs for Dattatri's system by allowing portions of the processing to be completed on the client side prior to sending to the server.

29. As per claim 13, Dattatri does not explicitly teach:

the method of claim 12, wherein each said filtering agent detects changes to the processes running on the network, and further comprising maintaining the event correlation engine in accordance with the detected changes to the processes.

30. Lin teaches the above section see for example Col. 8, lines 3-22 for the advantages of distributed process computing.

It would have been obvious to one of ordinary skill in this art at the time of invention was made to combine the teaching of Dattatri and Lin because they both dealing with remote monitoring of network systems. Furthermore, the teaching of Lin

wherein each said filtering agent detects changes to the processes running on

the network, and further comprising maintaining the event correlation engine in accordance with the

detected changes to the processes

would improve the resource management costs for Dattatri's system by allowing portions of the processing to be completed on the client side prior to sending to the server.

31. As per claim 14, Dattatri does not teach:

the method of claim 13, further comprising, when it is determined in step (k) that the performance or the availability of one of the production applications is impaired, determining and reporting a cause of impairment and its corresponding effect on an SLA in accordance with the event correlation engine.

32. Lin teaches the above section see for example, Col. 9, lines 35-55; Col. 10, lines 30-35 for the advantages of distributed process computing, and rational to combine is addressed in claim 4 above.

Conclusion

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents and publications are cited to further show the state of the art with respect to "SYSTEM AND METHOD FOR CONTINUOUS MONITORING AND MEASUREMENT OF PERFORMANCE OF COMPUTERS ON NETWORK".

i.	US 2002/0133584	Greuel et al.
ii.	US 5964837	Chao et al.
iii.	US 2002/0055967	Coussement
iv.	US 5764626	VanDervort.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chad Zhong whose telephone number is (571)272-3946. The examiner can normally be reached on M-F 7:15 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BURGESS, GLENTON B can be reached on (571)272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CZ
November 17, 2004

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